

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 130

INTRODUCER: Criminal Justice Committee and Senator Richter

SUBJECT: Discharging a Firearm

DATE: September 16, 2015      REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Cellon  | Cannon         | CJ        | Fav/CS |
| 2. |         |                | CA        |        |
| 3. |         |                | FP        |        |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 130 amends s. 790.15, F.S., to add a subsection prohibiting the recreational discharge of a firearm in areas that are primarily residential. A person who violates the provisions of this bill could be convicted of a first degree misdemeanor which is punishable by up to a year in jail and a \$1,000 fine.

Recreational discharge includes target shooting or celebratory shooting. These types of firearm discharges are prohibited in an area that the person knows or reasonably should know is primarily residential in nature and has a residential density of one or more dwelling units per acre.

The first degree misdemeanor penalties created by the bill do not apply to a person lawfully defending life or property or performing official duties that require firearm discharge in the residential area. Additionally, the penalties do not apply if, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Legislative Preemption of the Field of Firearm and Ammunition Regulation

#### *The Joe Carlucci Uniform Firearms Act*

The Joe Carlucci Uniform Firearms Act, as s. 790.33, F.S., is known, became law in 1987.<sup>1</sup> The policy and intent of the Act was stated as follows:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.<sup>2</sup>

The Act accomplished its stated purpose by “occupying the whole field of regulation of firearms and ammunition,” as stated in subsection (1) of the Act:

PREEMPTION.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.<sup>3</sup>

Despite the provisions of the 1987 law and a Florida appellate court opinion upholding it,<sup>4</sup> local governments enacted, considered enacting, or attempted to enforce existing ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting.<sup>5</sup>

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<sup>1</sup> Ch. 87-23, L.O.F.

<sup>2</sup> Section 790.33(3)(a), F.S. (1987).

<sup>3</sup> Section 790.33(1), F.S. (1987).

<sup>4</sup> *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

<sup>5</sup> For example see FL AGO 2000-42 (“May a municipality enact an ordinance requiring the use of locking devices on firearms stored within the city?”); FL AGO 2005-40 (“May a county pass an ordinance prohibiting the discharge of a firearm in proximity to persons or property when such discharge endangers the health, welfare, and safety of the citizens of such county?”). Similarly, note that s. 790.333, F.S., sets forth Legislative preemption of “the whole field of regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges.” In FL AGO 2008-34, the following query was discussed: “May a county enforce its land development code to prohibit a shooting range in a residential land use district in light of section 790.333(8), Florida Statutes?” The Attorney General opined as follows: To read the preemption provision in section 790.333, Florida Statutes, as a total ban on the application of any zoning or land use regulation upon an existing or proposed sports shooting range would render section 823.16 (7), Florida Statutes...of no use or consequence. ...it is my opinion that a county clearly may impose existing zoning and land use regulations upon the siting of a proposed sports shooting range; however, no newly created or amended zoning or land use regulations may be enforced against existing ranges.

### ***Recent Legislative Change***

The Legislature amended s. 790.33, F.S., in 2011. The amendment created civil penalties of up to \$5,000 for the knowing and willful violation of the preemption law by any elected or appointed public official or agency head. The amendment also created injunctive relief against the enforcement of any ordinance, regulation, or rule by local governmental entities.<sup>6</sup>

Subsequent to the 2011 amendment to s. 790.33, F.S., local governments began to examine, reevaluate, and repeal local ordinances related to firearms or ammunition.<sup>7</sup>

### **Discharging a Firearm**

Prior to 2012, s. 790.15(1), F.S., did not address discharging a firearm on private property except that it was a first degree misdemeanor to knowingly discharge a firearm over any occupied premises.<sup>8</sup>

#### 790.15. Discharging firearm in public

(1) Any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Game and Fresh Water Fish Commission or Division of Forestry.

In 2012, the Legislature amended s. 790.15(1), F.S., to prohibit recklessly or negligently discharging a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013, F.S., or zoned exclusively for residential use.<sup>9</sup>

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<sup>6</sup> Ch. 2011-109, L.O.F., effective October 1, 2011.

<sup>7</sup> FL AGO 2011-17 (“May [a] county regulate the recreational discharge of firearms in residentially zoned areas in light of section 790.33, Florida Statutes?”); “County repeals hunting, gun laws,” Tallahassee Democrat, pg. 1, June 15, 2011.

<sup>8</sup> Section 790.15(1), F.S. also punishes as a first degree misdemeanor the knowing discharge of a firearm in any public place or on the right-of-way of any paved public road, highway, or street or over the right-of-way of any paved public road, highway, or street.

<sup>9</sup> Ch. 2012-108, L.O.F. Note that the term “dwelling” is defined in accordance with s. 776.013, F.S., as a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

### ***Backyard Gun Ranges***

In recent months, there have been reports of persons constructing “gun ranges” in their backyards.<sup>10</sup> Many of the persons using backyard gun ranges live in residential neighborhoods, which cause their neighbors concern for their safety. There was one report of a man being struck and killed by a stray bullet fired from a neighbor’s yard in Volusia County in December 2013.<sup>11</sup> According to the news reports, some local law enforcement and their legal counsel found the language “recklessly or negligently discharges a firearm,” as it appears in s. 790.15(1), F.S., to be subjective and vague.<sup>12</sup> This interpretation of the language seems to have inhibited law enforcement from taking a proactive approach in the reported circumstances.<sup>13</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 790.15, F.S., to clarify the circumstances under which a person who recreationally discharges a firearm outdoors in specified locations may be charged with a first degree misdemeanor.

Recreational discharge includes target shooting or celebratory shooting. These types of firearm discharges are prohibited in an area that the person knows or reasonably should know is primarily residential in nature and has a residential density of one or more dwelling units per acre.

It is not a crime under the newly-created subsection (4) of s. 790.15, F.S., if the person discharges a firearm while lawfully defending life or property or when the person discharges a firearm while performing official duties which require the discharge. Also, it is not a crime to discharge a firearm in the residential area described above if, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>10</sup> See, e.g., *Backyard gun range concerns St. Pete neighbors*, <http://www.wtsp.com/story/news/local/2015/02/02/man-builds-gun-range-in-his-yard-neighbors-concerned/22777421/> (last visited September 8, 2015), and *Fla. law allows backyard shooting ranges*, <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited September 8, 2015).

<sup>11</sup> *Fla. law allows backyard shooting ranges*, <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited September 8, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 790.15 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on September 16, 2015:**

Changed the effective date of the bill from “July 1, 2016” to “upon becoming a law.”

B. Amendments:

None.